laws, by arbitrarily separating wage-earners from other classes of people, and providing for them a different rule of action.

This decision becomes of local interest in Virginia, in view of a statute of similar import in this State. See Acts 1895–6, p. 324; 1897–8, p. 667.

PLEA OF ANOTHER PENDING SUIT—FEDERAL AND STATE COURTS FOREIGN TO EACH OTHER.—In *International etc. R. Co.* v. *Barton* (Texas), 57 S. W. 272, it is held that the pendency of a prior action in a Federal court will not abate an action for the same cause between the same parties, pending in the State court, though both courts sit in the same State, and have the same territorial jurisdiction.

The authorities are in conflict, but the court follows what is conceived to be the weight of authority, citing *Cooper* v. *Newell*, 173 U. S. 555, 19 Sup. Ct. 506, 43 L. Ed. 808; *Gordon* v. *Gilfoil*, 99 U. S. 169, 25 L. Ed. 383; *Hyde* v. *Stone*, 20 How. 170, 15 L. Ed. 874; *The Kalorama*, 10 Wall. 204, 19 L. Ed. 944; *Stanton* v. *Embrey*, 93 U. S. 548, 23 L. Ed. 983; *Insurance Co.* v. *Harris*, 96 U. S. 331, 24 L. Ed. 959; *Short* v. *Hepburn*, 21 C. C. A. 252, 75 Fed. 113; *Latham* v. *Chafee* (C. C.), 7 Fed. 520; *Logan* v. *Greenlaw* (C. C.), 12 Fed. 10; *Crescent City Live-Stock, Landing & Slaughter-House Co.* v. *Butchers' Union Live-Stock, Landing & Slaughter House Co.* (C. C.), 12 Fed. 225; *Weaver* v. *Field* (C. C.), 16 Fed. 22; *Hurst* v. *Everett* (C. C.), 21 Fed. 218; *Briggs* v. *Stroud* (C. C.), 58 Fed. 720; *Coe* v. *Aiken* (C. C.), 50 Fed. 640; *Pierce* v. *Feagans* (C. C.), 39 Fed. 587; *Beekman* v. *Railway Co.* (C. C.), 35 Fed. 3; *Rejall* v. *Greenhood* (C. C.), 60 Fed. 786; *Merritt* v. *Barge Co.*, 24 C. C. A. 530, 79 Fed. 228; *Zimmerman* v. *So Relle*, 25 C. C. A. 518, 80 Fed. 419; *Hughes* v. *Green*, 28 C. C. A. 537, 84 Fed. 833; *Bank* v. *Bonney*, 101 N. Y. 173, 4 N. E. 332; *Litchfield* v. *City of Brooklyn* (City Ct. Brook.), 34 N. Y. Supp. 1090; *Checkley* v. *Steamship Co.*, 60 How. Prac. 511; *Wood* v. *Lake*, 13 Wis. 84; *Wurtz* v. *Hart*, 13 Iowa, 518; *Hampton's Heirs* v. *Barrett*, 12 La. 159; *Caine* v. *Railway Co.* (Wash.), 41 Pac. 904.

EASEMENTS—PROTECTION BY INJUNCTION.—The case of *Ives* v. *Edison* (Mich.), 83 N. W. 120, involves the question as to the circumstances necessary to call forth the powers of a court of equity in the protection of an easement. The facts were somewhat similar to those in the recent Virginia case of *Woods* v. *Early*, 95 Va. 307. The Michigan court cites the Virginia case with approval, and quotes from the opinion of Cardwell, J., as follows:

"Mr. Justice Story says: 'Where easements or servitudes are annexed by grant or covenant, or otherwise, to private estates, the due enjoyment of them will be protected against encroachments, by injunction.' 2 Story, Eq. Jur. sec. 927. It was said by Judge Burks in *Sanderlin* v. *Baxter*, 76 Va. 305: 'Damages in repeated suits would not compensate in such a case. The injury is irreparable, and calls for a preventive remedy, such as a court of equity only can furnish. That court constantly interposes by injunction where the injury is of that character. By the term 'irreparable injury' it is not meant that there must be no physical possibility of repairing the injury. All that is meant is that the injury would be a grievous one, or at least a material one, and not adequately reparable in damages.' See, also, Kerr, Inj. p. 199, c. 15, sec. 1; *Manchester Cotton Mills* v. *Town of Manchester*,

25 Gratt. 825, 828; *Switzer* v. *McCulloch*, 76 Va. 777; *Anderson* v. *Harvey's Heirs*, 10 Gratt. 386, 398; *Rakes* v. *Manufacturing Co.* (Va.), 22 S. E. 498, 499."

In the same case the court applied the rule that where the defendant proceeds to disturb the existing status of things after suit brought, he may be required to restore the original status, although this can be done only at an expense far in excess of the pecuniary injury to the complainant. The defendant proposed to change the location of a certain flight of stairs in which the complainant had an easement of right of way. Complainant's bill to enjoin the alteration was dismissed by the lower court, whereupon, without awaiting the result of an appeal, defendant proceeded with the alteration. The appellate court, properly as it would seem, required the stairs to be restored as originally located, although to do so required the tearing down a large portion of an expensive building.

CONTRACT TO SUPPLY QUANTITIES "AS NEEDED."—An agreement to furnish crushed stone "in such quantities as may be desired," to be "delivered on street" in a certain city, without making any more definite provision as to the quantity to be furnished, though made with one who has a contract for paving a street in that city, is held, in *Hoffman* v. *Maffioli* (Wis.), 47 L. R. A. 427, to be insufficient to bind the other party to furnish him at his option all the stone needed for paving such streets, since it does not bind him to take such quantity.

In discussing a recent case of similar character, in which the opposite conclusion was reached, the *Harvard Law Review* says:

"A promise by one party to buy all the ice necessary for carrying on his business of ice dealer was, in a recent case, held good consideration for a promise to supply such a quantity at certain prices. *Hickey* v. *O'Brien*, 82 N. W. Rep. 241 (Mich.). The decision is important, for although contracts to meet indefinite business requirements must be frequent, the few cases testing their validity are in conflict. The weight of authority is in accord with the principal case. *National Furnace Co.* v. *Keystone Mfg. Co.*, 110 Ill. 427; *Smith* v. *Morse*, 20 La. Ann. 220. But in some courts the contrary view has prevailed. *Bailey* v. *Austrian*, 19 Minn. 535; *Keller* v. *Y'Barru*, 3 Cal. 147.

"In *Bailey* v. *Austrian*, *supra*, the leading case in support of the latter view, the plaintiffs agreed to purchase of the defendant all the pig iron they might want in their business during a specified time. The court held the contract invalid, because the plaintiffs did not 'agree to want any quantity whatever': as by discontinuing business they could avoid all obligation, and thus were bound by no positive agreement. In the principal case the court, while rightly differing from this decision, met the objection it offered on the untenable ground that since it must be presupposed that the business would continue, the purchase of some ice was in truth agreed upon. But the promisor made no stipulation to keep up the business, and he was, therefore, at liberty to act so as to incur no obligation to buy. The true test of validity in such a case is not whether the promise made necessary the purchase of some ice, but whether it fettered, or might have fettered, the promisor's conduct? Such clearly was the effect of the present promise. The promisor made an absolute engagement to refrain from buying ice for business purposes from any one but the promisee. His free action was hampered, for he had either to incur an obligation or to give up his business. Therefore, while